

REMARKS

Claims 1 and 3-20 are currently pending, with claim 1 being the sole independent claim. Independent claim 1 has been amended to incorporate the subject matter of dependent claim 2. Claims 11, 12, 14, 16, 17 and 20 are amended to dependent directly from claim 1. No new matter has been added. Reconsideration of the above-identified application, in view of the following amendments and remarks, is respectfully requested.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry and acknowledgment that the IDS and the references cited therein have been entered and considered is requested.

Rejection of Claims under 35 U.S.C. §102 and §103

Claims 1-8, 11-16, and 18 stand rejected under 35 U.S.C. §102(b) as anticipated by DE 195 34 411 ("*Frank*"). Claims 1-4, 6, 7, 9-15, 17, and 19 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 4,694,857 ("*Harris*"). For the following reasons, reconsideration of these rejections is requested.

Independent claim 1 has been amended to incorporate the subject matter of dependent claim 2 (now canceled). Thus, independent claim 1 now recites, *inter alia*, "wherein a second vertical arm connects the first horizontal arm and the second horizontal arm of the damping device, and wherein only the second horizontal arm of the arms of the damping device is directly connected to the second retaining means". The cited art fails to teach or suggest this limitation.

The Examiner (at pg. 3 of the Office Action) asserts that:

Frank teaches the device ... wherein a second vertical arm connects the first horizontal arm and the second horizontal arm (strut (24') is arranged between the upper flange 13 and the lower s-bar as shown in figure 3,5), and wherein only the second horizontal arm (that is lower s-bar) is directly connected to the second retaining means (the receptacle (14)).

Applicant disagrees that *Frank* teaches the device for retaining a fuel pump in a fuel container of a motor vehicle as recited in now amended independent claim 1. Firstly, the Examiner asserts that the s-shaped elements 27 of *Frank* are the claimed horizontal arms. Independent claim 1 recites “a damping device connecting the first and the second retaining means to one another ... the damping device has arms which are angled away from each other ... wherein the arms of the damping device include at least one first vertical arm extending substantially in a vertical direction and first and second horizontal arms extending substantially horizontally and angled away from the first vertical arm, the first and second horizontal arms being spaced apart in the vertical direction. *Frank* fails to teach or suggest the expressly recited subject matter of independent claim 1.

The Examiner asserts that the vertical struts (24', 24'', 24''') of *Frank* correspond to the damping device of independent claim 1. Within the damping device, independent claim 1 requires that the first and second horizontal arms be spaced apart in the vertical direction. In *Frank*, however, each of the s-shaped elements 27 is arranged at the same vertical position and, thus, are not spaced apart in the vertical direction.

Moreover, the Examiner refers to upper and lower bars 27 in Fig. 3. However, Fig. 3 is a plan view of the structure viewed from above looking in a downward direction (see the line III – III in Fig. 1). Accordingly, the s-shaped elements 27 are not vertically spaced apart but, rather, the s-shaped elements are disposed within the same horizontal plane within the alleged structure that corresponds to the damping device of independent claim 1. Accordingly, *Frank* fails to teach or suggest “wherein the arms of the damping device include at least one first vertical arm extending

substantially in a vertical direction and first and second horizontal arms extending substantially horizontally and angled away from the first vertical arm, the first and second horizontal arms being spaced apart in the vertical direction”, as expressly recited in independent claim 1. Therefore, withdrawal of the rejection of independent claim 1 as anticipated by *Frank* is therefore requested.

The claimed damping device of independent claim 1 now additionally requires that “a second vertical arm connects the first horizontal arm and the second horizontal arm of the damping device” and that “only the second horizontal arm of the arms of the damping device is directly connected to the second retaining means”. There is no structure in the *Frank* device that meets this expressly claimed configuration. The Examiner at (pg. 13 of the Final Office Action, *Response to Arguments*) asserts that the English translation of *Frank* teaches that the holder 11 is manufactured in one piece. Under the Examiner’s proffered analysis, however, such as construction fails to achieve the expressly recited subject matter of now amended independent claim 1. That is, in a structure in which the holder 11 is manufactured in one piece, more than the lower s-bar is connected to the second retaining means (i.e., the receptacle 14)). Here, both horizontal struts 24’, 24’’ are connected to the receptacle 14, as well as the lower s-bar. Independent claim 1 now recites that “only the second horizontal arm of the arms of the damping device is directly connected to the second retaining means”. *Frank* therefore fails to teach or suggest amended independent claim 1 for this additional reason.

Harris also fails to disclose at least the claimed horizontal arms and the first and second vertical arms. *Harris* discloses a fuel sender unit for delivering fuel from a fuel tank including a top mounting plate 12. Upper and lower pump support frames 35, 36 suspend a fuel pump 32 (see col. 4, lines 55-57 of *Harris*). The upper support frame 34 includes a central shaft 60 from which fins 62 extend outwardly (see col. 4, lines 59-63). The lower support frame 36 includes legs 88 which

are interconnected with the fins 623 and a pump carrier dish 84 on which the fuel pump 32 is supported (see col. 5, lines 34-39). A noise insulating gasket is arranged between the dish 84 and the fuel pump 32 (see col. 5, lines 39-42).

The Examiner states that the legs 88 are considered to disclose the claimed vertical and horizontal arms. However, even assuming *arguendo* that the lower portions of the legs 88 constitute horizontal arms, these arms are not spaced apart in the vertical direction. Rather, the legs 88 of *Harris* are also disposed in the same horizontal plane, i.e., they are not spaced apart in the vertical direction such they would be spaced along the vertical axis of the fuel pump. Moreover, the fins 62 of *Harris*, which the Examiner considers to be the horizontal arms, are located externally to what the Examiner has identified as the damping device (i.e., vertical legs 88). Therefore, in the disclosed configuration of the *Harris* device, it is not possible to provide "first and second horizontal arms extending substantially horizontally and angled away from the first vertical arm, the first and second horizontal arms being spaced apart in the vertical direction", as now expressly required by amended independent claim 1.

Since *Harris* fails to teach or suggest the claimed horizontal arms, *Harris* thus also fails to teach or suggest *at least*, "a second vertical arm connects the first horizontal arm and the second horizontal arm of the damping device, and wherein only the second horizontal arm of the arms of the damping device is directly connected to the second retaining means" as expressly recited in independent claim 1. Therefore, *Harris* fails to render independent claim 1 obvious and unpatentable and the rejection of claim 1 in view of *Harris* should be withdrawn.

Independent claim 1 is patentable over *Frank* and/or *Harris*. Reconsideration and withdrawal of all the rejections under 35 U.S.C. §102(b) and §103(a) are therefore in order, and a notice to that effect is respectfully requested.

In view of the patentability of independent claim 1, dependent claims 3-20 are also patentable over the prior art for the reasons set forth above, as well as for the additional recitations contained therein.

Based on the foregoing remarks, this application is in condition for allowance. Early passage of this case to issue is respectfully requested.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

Respectfully submitted,
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